

Permanency Planning for Abused and Neglected Children



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This publication is written for family court judges, attorneys representing the South Carolina Department of Social Services (DSS), DSS caseworkers, guardians ad litem (GALs), and attorneys who are subject to appointment in abuse and neglect proceedings pursuant to SCACR 608. Part I provides an overview of state law requirements for permanency planning in family court and references relevant federal requirements. Part II is a discussion of some of the issues which practitioners and the court may confront in effecting permanency for children.

Part I: Permanency Planning Basics

Time Frames

South Carolina law requires that a permanency planning hearing be held on at least an annual basis for every child in foster care. The family court must review the status of the child, assess the parents' compliance or lack of compliance with the placement plan, and review DSS' progress toward achieving permanency for the child. In some cases, it may be appropriate for the court to proceed with permanency planning before the expiration of one year. For example, if a child is abandoned, and the family court authorizes DSS to terminate or forego reasonable efforts to reunify the family, the permanency planning hearing should be held within 30 days of this judicial determination, unless the requirements for permanency planning are fulfilled at this same hearing.

Procedural Issues

DSS initiates a permanency planning hearing by filing and serving a notice and motion for permanency planning. A supplemental report prepared by a DSS caseworker should accompany the motion. The supplemental report describes the services that have been offered to the child's parents, discusses the parents' response to services offered, and explains the steps DSS is taking toward implementation of a permanent plan for the child. The hearing notice, motion, and supplemental report must be served on all parties at least ten (10) days before the permanency planning hearing.

If the child came into foster care because the parents relinquished custody and consented to the child's adoption, and no other action is pending in the family court, the permanency planning hearing is initiated by the filing of a summons and petition for review. These pleadings are to be served upon all parties at least ten (10) days prior to the hearing as well.

The Adoptions and Safe Families Act (ASFA) regulations require that the permanency planning hearing be an actual hearing open to participation from the parents, foster parents, pre-adoptive parents, and the child, if age appropriate, as well as the GAL for the child.

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Consent orders, paper reviews, *ex parte* hearings or other actions or hearings not open to participation by these parties do not constitute proper permanency planning hearings. All parties must be notified and given an opportunity to

participate in the permanency planning hearing; however, it is not mandatory that these parties attend, and their failure to attend a hearing is not a basis for continuing the hearing.

Permanency Plans

DSS will present to the court the agency's plan which is intended to achieve permanence for the child. Depending upon the circumstances, it is not necessary for siblings to have the same permanent plan; each child is considered individually according to what is in that child's best interests. The family court has a choice of five (5) permanency plans at the initial permanency planning hearing:

- (1) Reunification:** The court must find that the child may be safely maintained in the home without unreasonable risk of harm to the child's life, safety, physical health or mental well-being. The court should consider all evidence, including whether the parents have substantially complied with the placement plan. The court may require DSS to provide protective services for up to twelve (12) months following the child's return home.
- (2) Extension or Modification of the Placement Plan:** If the court determines that the parents have not substantially complied with the placement plan to make immediate return of the child appropriate, but also determines that the child may be returned to the parents within a specified reasonable amount of time, the court may extend or modify the placement plan with the goal of reunifying the child with his parents at a later date. This is only an appropriate permanent plan if the court finds that termination of parental rights is not in the best interests of the child.
Reunification must occur within eighteen (18) months of the child's entry into the foster care system. If a child is not reunified with his or her parents within eighteen (18) months, the court must adopt a different permanent plan.
- (3) Termination of Parental Rights and Adoption:** Except in cases where the court has extended or modified the placement plan, the court must order DSS to file a petition to terminate parental rights if reunification is not an appropriate permanent plan. DSS must file an action to terminate parental rights within sixty (60) days of receipt of the permanency planning order. DSS must also exercise and document every effort to expedite adoption and no adoption can be denied or delayed simply because a child has special needs. After termination of parental rights or relinquishment and consent to adoption by the legal and biological parents, a child may be adopted. A child over fourteen years of age must consent to his or her own adoption.

(4) Custody or Guardianship to a Relative or Non-Relative: After a thorough adoption assessment, DSS may determine that termination of parental rights is not in a child's best interests, and that a relative or non-relative is willing to accept placement of the child. The court may grant custody or guardianship to a relative or non-relative. However, before the court grants custody or guardianship, DSS must submit a thorough home study of the prospective caregiver. The court may order a period of visitation between the child and the prospective caregiver before receiving the home study. The court may also order a period of child protective services and supervision not to exceed twelve (12) months.

(5) Another Planned Permanent Living Arrangement: If DSS proves that there are compelling reasons not to establish a permanent plan of reunification, termination of parental rights and adoption, or custody to a relative or non-relative, the court may approve "another planned permanent living arrangement." The compelling reasons for adopting "another planned permanent living arrangement" as a child's permanent plan must be stated in the permanency planning order, and the court must find that the alternative plan is in the best interests of the child. The plan must also accomplish the goal of providing a specific long-term stable placement for the child.

After the initial permanency planning hearing, hearings must be held annually as long as a child remains in foster care. However, a named party, the child's GAL, or the local foster care review board may file a motion for review of the case at any time. Any other party in interest may move to intervene in the case, and if the motion is granted, may move for review of the case. Parties in interest include, but are not limited to, an individual with physical or legal custody of the child and the foster parent. The notice and motion for review must be served on all named parties at least ten (10) days before the hearing and shall state the reasons for review of the case and the relief requested.

If an appeal is pending concerning a child in foster care, the court still has jurisdiction to conduct a permanency planning hearing. The court retains jurisdiction to review the status of the child and may act on matters not affected by the appeal.

Part II: Special Considerations

An abuse and neglect case can involve a number of issues which, if not anticipated by practitioners, can impede efforts to achieve permanency for a child in foster care.

Infants and Toddlers

Abuse and neglect have the greatest developmental impact on the very young. In the United States, infants are the fastest growing population of children entering the foster care system. Half of all babies who enter foster care before they are three months old spend thirty-one months or longer in foster care. These babies are less likely to be reunified with their parents. However, intervention during the early years may help the child avoid a lifetime of failure and reliance upon various public welfare systems.

During permanency planning, there are several areas that should be analyzed to effectively intervene on behalf of infants and toddlers. Judges, lawyers, and GALs should pay careful attention and inquire about certain areas that affect the development of these children.

Attention should be given to whether these babies have had comprehensive health assessments. A comprehensive health assessment would include a physical examination to establish a baseline for the child's current health care status, a determination of whether the child has been immunized, whether the child has vision or hearing difficulties, screening for lead exposure, the need for dental care, and a determination of whether the child has any contagious diseases.

Infants and toddlers should also be screened for developmental delays. A child who has developmental delays may access two federal entitlement programs. First, children under the age of three may access the Early Intervention Program under Part C of the Individuals with Disabilities Education Act (IDEA). Second, a child between the ages of three and five may access the Preschool Special Education Grants Program. Both biological and foster families may receive the benefits of these programs.

Judges, lawyers, and GALs should also determine whether these children have had mental health assessments or evaluations, and also whether they are receiving any needed mental health treatment. Because early childhood education has such a profound effect on educational and life achievement, assessment of the needs of infants and toddlers should also include a determination of whether these children are enrolled in high quality early childhood programs.

It is also important to explore whether the foster parents, some of whom may be prospective adoptive parents of infants and toddlers, are educated about the social and emotional needs of the children; whether these caregivers are receiving information and support for the placement; and whether the foster parents are capable of identifying problems the children may be experiencing and accessing appropriate services.

Adolescents

Youth, ages 15 to 21, experience many changes that make transition to adulthood challenging. Research demonstrates that youth in foster care experience an even more difficult time making the transition to adulthood. Foster children and children formerly in foster care are less likely to complete high school. They have difficulty maintaining employment. They are often unable to access health and dental insurance and therefore, do not receive adequate health care. And further, former foster care youth live at or below the poverty line more so than other members of the general population.

For courts, permanency planning for youth in this age group presents its own set of barriers. Because these children are regarded as “unadoptable,” their case plans may not be given priority. Failure to implement concurrent planning, where the agency pursues more than one permanency outcome, presents a barrier to successful permanency planning for adolescent youth. A lack of permanent placement resources impedes permanency planning and the absence of parental or family involvement in case planning interferes with permanency planning.

In the United States, it is common for young people to receive emotional and financial support from their parents and other family members well into adulthood. Conversely, foster care youth may lack the support of family members and may exit the child welfare system, in many instances, at age 18, without support of any kind.

Thus, it is important to closely monitor permanency planning for adolescents. The court should pay special attention to ensuring that the case plans for adolescent children are designed to give them the best opportunity to become healthy, productive members of society.

Federal law recognizes the unique needs of adolescent youth in foster care and responds to these needs through two pieces of legislation. The Independent Living Program was added to the Social Security Act in 1985, and in 1999, the Social Security Act was further amended by the Chafee Foster Care Independence Act (FCIA), 42 U.S.C. §677.

FCIA requires a State to:

- ❖ Provide services to youth up to age 21 who are in foster care during a time period defined by the State. DSS has designated Independent Living funds for foster care youth between the ages of 13 and 21. In South Carolina, Independent Living funds are available to youth who remain in foster care until they reach the age of 18. **Youth who leave foster care before age 18 are ineligible for Independent Living funds.** Independent Living funds must be utilized to cover costs associated with preparing youth to live independently. The monies cannot be used for placement costs and should only be used to supplement other funding sources. If community-based services are available, they must be utilized;
- ❖ Provide services to youth regardless of the permanency plan or placement setting;
- ❖ Provide services to all youth to help acquire independent living skills, including youth with special needs or disabilities; and
- ❖ Develop outcome measures for programs that use FCIA dollars.

FCIA allows a State to:

- ❖ Use up to 30% of Independent Living funds to provide room and board to youth who have aged out of the system and who are older than 18 years and under age 21;
- ❖ Extend Medicaid coverage until age 21 for youth who have left foster care.

Pregnant and Parenting Youth

A foster child's pregnancy or expectancy can impact permanency planning in a number of ways. Pregnant and parenting youth can experience delays in achieving a safe, stable, permanent home because the professionals handling these cases are not sure how to proceed with permanency for these youth. The birth of a child to a child who is in foster care can sometimes result in the infant's entry into the foster care system unnecessarily, thereby perpetuating a cycle of abuse and neglect and reliance on public welfare systems.

Title IV-E of the Social Security Act anticipates that a child born to a foster child will remain in the physical and legal custody of the foster child. IV-E payments made to the State to maintain the foster child must include an additional amount to support the infant. The State does not need to make a separate determination of eligibility for the infant to receive these monies. Furthermore, infants who remain in the physical and legal custody of their parents are eligible to receive Medicaid.

Effective permanency planning for pregnant and parenting youth should begin with an effort to secure joint placement for the foster child and the infant, when joint placement would not be contrary to the infant's best interests. Permanency planning for pregnant and parenting youth should also include an assessment of whether the youth is receiving parenting education, as well as an assessment of proper child care arrangements for the infant. The overall objective of permanency planning for pregnant and parenting youth is that these youth exit the child welfare system to a safe, stable, environment and that their parental rights remain intact.

Children with Incarcerated Parents

The child welfare system is impacted by an increasing number of children whose parents are incarcerated. When these children enter the foster care system, courts face unique problems in the efforts to achieve permanency. These children often present with emotional problems that are the result of the abuse or neglect they have endured and that stem from the loss of the parent and perhaps, unpredictable changes in caregivers since the parent's incarceration. Children who have an incarcerated parent also have therapeutic needs stemming from their parent's criminal behaviors prior to incarceration and the stigma of having a parent in jail or in prison. The most unique aspect of permanency planning for a child with incarcerated parents is that the length of time the child spends in foster care is not simply determined by the parent's willingness to cooperate with a placement plan or the parent's willingness to demonstrate an ability to care for the child.

Also, coordinating visits between these children and their parents presents challenges. However, in appropriate cases, DSS is legally mandated to make reasonable efforts to reunify families. When it would not be contrary to the child's welfare, DSS caseworkers should facilitate visits between the child and the incarcerated parent. Visitation can reduce the impact of parent-child separation and help the child to cultivate and maintain a relationship with the parent. In addition, visitation may increase the chances of successful reunification.

To affect permanency for children of incarcerated parents, practitioners must be aware of the length of time the parent will be incarcerated, know the parent's actual sentence, eligibility for parole, and expected date of release. Practitioners must also be willing to educate themselves about the availability of treatment services within the Department of Corrections.

Once a date of release is determined and a placement plan is implemented, the focus shifts to an assessment of the parent's ability, when released, to care for the child in an appropriate way. Practitioners must also assess the parent's ability to cope with multiple stressors upon release, including, securing employment and housing, and dealing with the threat of relapse if the parent is addicted to a controlled substance or alcohol.

If reunification is not possible because of the length of the parent's sentence or the inability to access needed treatment services while the parent is incarcerated, other permanency options must be considered. Adoption, custody, and guardianship are appropriate alternatives. Each of these options provides children with security and stability. Ultimately, what must be remembered is that even children who have an incarcerated parent are entitled to a plan for permanency within 12 months of entering foster care.

Noncustodial Fathers

Delays in achieving permanency are sometimes caused by the failure to include a noncustodial parent (usually the child's father) in the child welfare case from its inception. When children enter foster care they are typically removed from their mothers as primary caretakers, and in many cases, fathers do not participate or remain on the periphery of the case.

There are several reasons why noncustodial fathers do not participate in child welfare cases. Among the reasons are the mother's failure to identify the father; the caseworkers' failure to pursue the mother for information about the father's identity; the existence of a poor relationship between mother and father; the father's fear of becoming involved with the child welfare system; and the time it takes to establish paternity.

According to the National Family Preservation Network, children who have no contact with their father are:

- ❖ Five times more likely to live in poverty;
- ❖ More likely to bring weapons and drugs into the classroom;
- ❖ Twice as likely to commit crimes;
- ❖ Twice as likely to drop out of school;
- ❖ Twice as likely to be abused;
- ❖ More likely to commit suicide;
- ❖ More than twice as likely to abuse drugs or alcohol; and
- ❖ More likely to become pregnant as teenagers.

These statistics suggest that when the child welfare system fails to enlist the participation of a noncustodial father, the system contributes to the problem of multigenerational reliance upon the system.

Failure to identify and include a biological father from the beginning of the child welfare case may cause delays in achieving permanency for a foster child. For example, when a father does come forward later in a case, his late entry may force the agency to reassess the child's case if the plan had been to terminate parental rights and place the child for adoption. The father may want to claim custody of the child or the father may have relatives who want to care for the

child. If the child's father has not previously been given notice and an opportunity to be heard, permanency may be delayed so that the agency can explore the suitability of placing the child with the father or with the father's relatives.

From the beginning of the child welfare case, practitioners must press for details about the identity and location of the child's father. If a mother is refusing to reveal this information, it is important to explore whether there are safety reasons inhibiting the mother's disclosure. Once a father is located, he should participate in case planning concerning the child. The father should also receive all hearing notices and motions, and be informed of the agency's recommendations about the case.

Interstate Placements

If the child's permanent plan requires that the child be placed in the care of a person who does not live in South Carolina, prior to finalizing the plan, in many cases, the court will need to comply with the Interstate Compact on the Placement of Children.

The Interstate Compact on the Placement of Children (ICPC) is a uniform law enacted in all 50 states, the District of Columbia, and the U.S. Virgin Islands. South Carolina's ICPC statutes are found in S.C. Code Ann. §20-7-1980 *et. seq.*

Essentially, the ICPC applies to four types of out-of-state placement decisions:

- ❖ Placements preliminary to adoption;
- ❖ Placements into foster care, including foster homes, group homes, residential facilities, and institutions;
- ❖ Placements with parents and relatives when a parent or relative is not making the placement, and
- ❖ Placements of adjudicated delinquents in institutions in other states.

The ICPC does not apply when the court transfers custody to a non-custodial parent if the court:

- ❖ Has no evidence that the parent is unfit;
- ❖ Does not seek such evidence; and
- ❖ Does not retain jurisdiction over the child after the court transfers the child.

The purpose of the ICPC is to ensure that when abused or neglected children are placed in another state, they receive a safe, appropriate placement: that they continue to receive the services they need: and that there is a mechanism for the prompt return of these children to South Carolina if necessary. Placing children out-of-state without following the ICPC could put them at risk of harm if the placement is inappropriate or if the children are unable to access services.

The court need not comply with the ICPC when a child visits another state. Whether a child's stay in another state is a "visit" is determined by purpose, duration, and intention.

When out-of-state placement is being considered in a child protection case, DSS must give written notice to the state to which the child will be sent. Upon receiving notification, the state to which the child may be sent, the "receiving state," will complete a home study or otherwise evaluate the placement to determine its suitability to meet the needs of the child.

Upon completion of the home study, the receiving state prepares a written report which contains a recommendation on whether the placement should be made. This process usually takes six weeks or 30 working days. However, the ICPC anticipates that priority will be given to certain hardship cases. For these cases, the court may order the completion of an expedited home study pursuant to Regulation Seven of the ICPC.

An expedited home study requires the receiving state to complete the home study within 20 working days. A child protection case is considered a hardship case if the prospective placement is in the home of a relative and:

- ❖ The child who needs placement is under two; or
- ❖ The child is in an emergency shelter; or
- ❖ The court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

When a request to place the child in another state is approved, South Carolina and the "receiving state" finalize the details of placing the child. The two states negotiate an agreement about payment for the child's care, the receiving state's monitoring of the placement, and the frequency of progress reports. After the agreement is finalized the child is placed in the receiving state.

While the child is in the out-of-state placement, South Carolina retains legal and financial responsibility for the child. South Carolina retains jurisdiction to make all decisions concerning the child's custody, care, and supervision just as if the child were in this state. South Carolina is responsible for the child until both states agree that this state's jurisdiction shall end.

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